



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

215 Fremont Street
San Francisco, Ca. 94105

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19 OCT 1982

Mr. M.G. Mefferd
State Oil & Gas Supervisor
Division of Oil and Gas
1416 - 9th Street, Room 1310
Sacramento, CA 95814

Dear Mr. Mefferd:

An issue has surfaced regarding the Division of Oil and Gas' application for primary enforcement authority over the Class II portion of the Underground Injection Control program. Questions have been raised surrounding permits issued by default and some clarification is required from your legal representative in the office of the state attorney general. The specific questions which must be addressed are in the attachment.

This appears to be the last hurdle prior to the approval of your program. If you have any questions, please don't hesitate to call Nathan Lau of my staff at (415) 974-8274.

Sincerely yours,

Richard E. Reavis
Chief, California Branch

Attachment

cc: Alan Hager, Deputy Attorney General
Tom Speicher, Acting Regional Counsel, EPA, Region VIII

1. Ability to impose conditions on notices whose approval is mandated.

Section 3203 of the Public Resources Code (PRC) requires that if the Supervisor fails to provide a written response within 10 working days of filing of a written notice of intent to commence drilling or to alter a well, "such failure will be considered as an approval of the notice and the notice shall, for the purposes and intents of this chapter, be deemed a written report of the Supervisor." EPA is concerned that this section may require, if the Supervisor fails to provide a written response within 10 days, approval of a notice that fails to meet all standards and requirements that apply to a permitted facility under State law. Please address the question whether, when Section 3203 requires a notice to be approved, the Supervisor is required to ensure that the approval meets all requirements of State laws. In addition, please state whether the Supervisor has the authority when approving such a notice to include, in addition to "standard conditions", specific conditions that convert general regulatory performance standards into requirements specific to the facility and the site. Indicate whether the Supervisor may, or must, impose such requirements even though they would require design changes in the notice approved be default.

2. Ability effectively to prohibit a facility that cannot meet State requirements

Section 3203 appears to require that if the Supervisor fails to provide a written response within 10 days of submission of a notice, the notice is approved and cannot be denied. This may conflict with the Supervisor's authority to comply with all State UIC requirements when approving the notice. For some applications, the site at which the facility is proposed to be constructed may be so sensitive that under no conditions could the activity take place there and also comply with State law. Please address the question whether, if the supervisor failed to act on a notice for such a facility within 10 days, the supervisor could deny the permit, or impose permit conditions so strict that the activity would be effectively prohibited.